STATE OF MICHIGAN

COURT OF APPEALS

DANITA PEOPLES-PETERSON, M.D.,

Plaintiff-Appellant,

v

HENRY FORD HEALTH SYSTEM, d/b/a HENRY FORD MEDICAL GROUP,

Defendant-Appellee.

UNPUBLISHED
January 18, 2011

No. 293866
Wayne Circuit Court
LC No. 08-111846-CL

Before: FORT HOOD, P.J., and MURRAY and SERVITTO, JJ.

PER CURIAM.

Plaintiff Danita Peoples-Peterson, M.D., appeals as of right the trial court's order granting defendant Henry Ford Health System's motion for summary disposition pursuant to MCR 2.116(C)(10) and thereby dismissing plaintiff's claims for breach of an employment contract and promissory estoppel. Because there was no employment contract between the parties and plaintiff's employment was terminable at will, and because promissory estoppel is inapplicable, we affirm.

Plaintiff, a dermatologist with a private medical practice in Midland, opted out of Medicare participation, meaning that she could treat Medicare enrollees only if they entered into private contracts with her. In these arrangements, plaintiff could not bill Medicare for her services and the patients could not obtain reimbursement from Medicare. See 42 CFR 405.425.

In late 2006, plaintiff applied for a position with defendant's senior medical staff to run a new dermatology clinic that defendant intended to open in Livonia. Plaintiff submitted her application for the position, but also renewed her "opt-out" status with Medicare for another two-year period, to run from January 1, 2007, to December 31, 2008. Defendant offered plaintiff the position at the Livonia clinic, subject to the approval of defendant's governing boards and other conditions. Plaintiff accepted the conditional offer. Plaintiff made inquiries about selling her practice in Midland before starting her new position with defendant, but no one expressed interest. Plaintiff and defendant anticipated that plaintiff would be permitted an eight-month transitional period to wind down her practice while starting her new employment with defendant.

Plaintiff was scheduled to start her new position with defendant on October 1, 2007. However, in September 2007, defendant became concerned about plaintiff's opt-out status with Medicare, given that approximately 30 percent of defendant's patients had Medicare coverage.

On September 25, 2007, defendant's Chief Operating Officer, Tom Nantais, verbally notified plaintiff that the employment offer was being withdrawn because she was not a Medicare provider. A follow-up letter dated September 27, 2007, similarly informed plaintiff that defendant was not able to process her employment application because of her "opt-out" status with Medicare. On September 28, 2007, however, defendant's Board of Governors approved plaintiff's appointment.

Plaintiff thereafter brought this action against defendant, asserting claims for breach of an employment contract and promissory estoppel. Defendant moved for summary disposition under MCR 2.116(C)(10), arguing that there was no genuine issue of material fact that plaintiff's employment with defendant was terminable at will, and that defendant had not made a clear and definite promise to induce plaintiff's reliance, as required to support a claim for promissory estoppel. The trial court agreed and granted defendant's motion. This appeal followed.

I. STANDARD OF REVIEW

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Meridian Twp v Ingham Co Clerk*, 285 Mich App 581, 586; 777 NW2d 452 (2009). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Driver v Naini*, 287 Mich App 339, 344; 788 NW2d 848 (2010), lv pending. The court must consider any admissible evidence submitted by the parties in a light most favorable to the nonmoving party. *Meridian Twp*, 285 Mich App at 586. Summary disposition should be granted if the evidence fails to establish a genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Meridian Charter Twp*, 285 Mich App at 586. In deciding a motion for summary disposition, the trial court may not assess the witnesses' credibility or resolve questions of fact. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

II. BREACH OF CONTRACT CLAIM

Plaintiff argues that, because she had a just-cause employment contract with defendant, the trial court erred in dismissing her breach of contract claim. We disagree.

Michigan law generally presumes that employment relationships are terminable at the will of either party. *Lytle v Malady (On Rehearing)*, 458 Mich 153, 163; 579 NW2d 906 (1998). Similarly, there is a presumption that employment for an indefinite duration is at-will employment. *Rood v Gen Dynamics Corp*, 444 Mich 107, 116; 507 NW2d 591 (1993). However, the presumption of at-will employment can be overcome by evidence of a contract for a definite term of employment, or one that forbids discharge without just cause. Such contractual provisions can be proven by evidence of (1) a contractual provision or a definite term of employment or a provision forbidding discharge without just cause, (2) a clear and unequivocal agreement, either written or oral, regarding job security, (3) or through evidence that the employer's policies and procedures created a legitimate expectation of job security in the employee. *Lytle*, 458 Mich at 164; *Toussaint v Blue Cross & Blue Shield of Michigan*, 408 Mich 579, 610; 292 NW2d 880 (1980). In this case, plaintiff contends that there is a genuine issue of fact whether she entered into an employment relationship with defendant for a definite term of two years, or whether defendant's policies and procedures created a legitimate expectation of just-cause employment. We disagree.

Plaintiff's contention that she entered into an employment relationship for a definite term of two years is based on condition number 7 in the Conditions to Medical Staff Offer that accompanied defendant's conditional offer of employment, and also on § 7.4.1 of defendant's governing bylaws. Condition number 7 states:

> In accordance with and governed by the Bylaws of the Medical Staff at Henry Ford Hospital and Medical Centers *all appointments are probational for the first two years*. Following your two year probational status, we will mutually determine your continued appointment to the staff; provided your performance review at that time is satisfactory. Your status will be reviewed annually by a performance appraisal process and bi-annually by a reappointment process. [Emphasis added.]

Section 7.4.1 of defendant's bylaws governing medical staff provides:

> An initial appointment to the Medical Staff is probationary for a period of two (2) years. During the probationary period, the Department Chair and/or Medical Director or his/her respective designee, shall observe and assess the new member. It is incumbent on the new member to demonstrate compliance with the requirements for clinical practice set by the Department Chair and/or Medical Director. Moreover, the new member must demonstrate all of the qualifications for Medical Staff membership in the category of privileges requested to the satisfaction of the Department Chair and/or Medical Director. *If appointment has not been earlier terminated*, then at the conclusion of the two (2) year probationary period, the Department Chair and/or Medical Director shall recommend that the probationary Medical Staff member be either:
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> (a) reappointed and be reviewed again in accordance with the biennial schedule; or
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> (b) removed from probationary Medical membership and terminated from employment, if applicable.
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> A *recommendation to terminate or remove an individual who is granted membership after the effective date of these Bylaws from the Medical Staff membership at any time during or at the end of the probationary period shall be at the sole discretion of the Department Chair or Medical Director to whom the probationary Medical Staff member is assigned. Such termination or removal or the imposition of any other corrective action* ***during the probationary period*** *does not entitle an individual to the procedural rights set forth in Article XIV of these Bylaws*. [Emphasis added.]

A court must enforce a contract according to its terms, construing and enforcing the contract as written. *Reicher v SET Enterprises, Inc*, 283 Mich App 657, 664; 770 NW2d 902 (2009). A court may not create an ambiguity when contractual language is clear and unambiguous, but rather must honor the parties' contract as written. *Id.* at 665.

Contrary to what plaintiff argues, the conditions and bylaws do not provide for a definite term of employment for two years. Instead, they only state that any appointment is probational for the first two years. Thus, assuming arguendo that an employment relationship was created, plaintiff was not hired for a definite two-year definite period, but rather for an indefinite period, the first two years of which were probational. The conditions clearly state that "all appointments are probational for the first two years." The bylaws similarly state that "[a]n initial appointment to the Medical Staff is probationary for a period of two (2) years." The bylaws further state that the department chair or medical director shall make a recommendation at the conclusion of the two-year probationary period "*[i]f appointment has not been earlier terminated*," thereby clearly indicating that the employment relationship may be terminated before the two-year probationary period has expired. Thus, there is no genuine issue of fact with regard to plaintiff's claim that she entered into an employment relationship for a definite term.

Plaintiff alternatively argues that defendant's written policy and procedures for correcting and disciplining employees created legitimate expectations that her employment relationship would not be terminated absent just cause. Plaintiff contends that article XIII of defendant's bylaws governing medical staff created reasonable expectations of job security. She relies, in part, on *Renny v Port Huron Hosp*, 427 Mich 415, 417-418; 398 NW2d 327 (1986), in which our Supreme Court held that "[t]he existence of a just-cause contract is a question of fact for the jury where the employer establishes written policies and procedures by which to discharge an employee, but does not expressly retain the right to terminate employees at will." However, as this Court recognized in *Biggs v Hilton Hotel Corp*, 194 Mich App 239; 486 NW2d 61 (1992), the mere existence of a disciplinary system does not establish a question of fact that employment is terminable only for just cause. In *Biggs*, this Court explained:

> The fact that defendant had established a disciplinary system for its employees and, apparently, obligated plaintiff to abide by that disciplinary system in dealing with his subordinates does not establish unequivocally plaintiff's position that he was a just-cause employee rather than an at-will employee. Certainly, it is not unreasonable to expect that an employer, particularly one such as defendant that employs a large number of individuals, would want a systematic method of dealing with its employees and would provide a consistent set of guidelines under which its managers would deal with subordinates. This does not mean that by doing so an employer establishes just-cause employment rather than at-will employment. The concept of at-will employment means not only that the employer, if it so chooses, may provide a disciplinary system and may terminate only for cause, but also that the employer may terminate for any other reason if the employer believes that that is in the best interests of the employer. [*Id.* at 241-242.]

Furthermore, in *Rood*, 444 Mich at 137, our Supreme Court stated:

> [W]e hold that where an employer establishes a policy of discharge for cause, it may become part of an employment contract only when the circumstances (e.g., the language in the handbook itself, or an employer's oral statements or conduct) clearly and unambiguously indicate that the parties so intended. In this case, there is no evidence, other than the mere promulgation and

> dissemination of the employee handbook that merely implies a discharge for cause policy, from which a reasonable juror could infer that [the defendant employer] manifested an intention to enter a "perpetually binding contractual obligation" with *all* of its management employees. Such evidence is insufficient as a matter of law. To hold otherwise, would deter the socially desirable and commercially beneficial use of employee handbooks.

In *Rood*, the Court distinguished the employee handbook at issue in that case from the handbook in *Renny*, explaining:

> In *Renny*, this Court also found that the employee handbook was reasonably capable of instilling legitimate expectations of just-cause employment in the employer's employees. Although the employee handbook in *Renny* did not contain an express discharge-for-cause-only policy statement as did the handbook in *Toussaint*, 408 Mich 579; 292 NW2d 880, it did provide a specific list of disciplinary violations and the penalties for each along with an optional grievance procedure. *Renny*, 427 Mich at 430-431. Of particular significance to this Court in *Renny* was the statement contained in the "Management Rights" section of the employee handbook, which provided that, although the employer retained the exclusive right to discharge employees, that right was *expressly* made "subject . . . to the regulations and restrictions outlined in th[e] Employee Handbook." *Renny* at 427. In neither *Toussaint* nor *Renny* did the employee handbook contain a statement expressly retaining the employer's common-law right to terminate employees at will. [*Rood*, 444 Mich at 139-140.]

In this case, defendant's policies expressly reserve defendant's right to terminate employees at will. Article XIII, which contains the disciplinary procedures on which plaintiff relies to establish a just-cause employment relationship, also provides:

> Nothing in this Article XIII shall be construed to limit the responsibility and rights of Department Chairs, Medical Directors, the Chief Executive Officer of the Henry Ford Medical Group, and/or the Chief Executive Officer of the System to take actions in the performance of their responsibilities. Additionally, *nothing in this Article XIII shall be construed to limit Henry Ford Medical Group or System leadership from making decisions regarding the contract or employment status of a Medical Staff member*.

This provision clearly reserves defendant's authority to make decisions regarding an employee's employment contract or status at any time, for any reason, thereby negating any reasonable expectations of continued employment or job security absent just cause for termination. Accordingly, there is no genuine issue of fact with regard to plaintiff's claim that defendant's written policy and procedures for correcting and disciplining employees created legitimate expectations of an employment relationship that could not be terminated absent just cause.

For these reasons, the trial court did not err in dismissing plaintiff's claim for breach of an employment contract. In light of our decision, it is unnecessary to address plaintiff's issues regarding whether the parties actually entered into an employment contract, or whether

plaintiff's "opt-out" status with Medicare constituted just-cause for terminating the employment relationship.

III. PROMISSORY ESTOPPEL CLAIM

Plaintiff also argues that the trial court erred in dismissing her promissory estoppel claim. We disagree. "The elements of a promissory estoppel claim consist of (1) a promise (2) that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of the promisee and (3) that, in fact, produced reliance or forbearance of that nature (4) in circumstances requiring enforcement of the promise if injustice is to be avoided." *Zaremba Equip, Inc v Harco Nat'l Ins Co*, 280 Mich App 16, 41; 761 NW2d 151 (2008). The promise must be definite and clear, and the reliance on it must be reasonable. *Id*.

In this case, plaintiff failed to establish the first element. Defendant did not make a clear and definite promise of continued employment. Rather, the evidence clearly establishes that defendant made a conditional offer of at-will employment, which was subject to a two-year probationary period. An offer of employment that is terminable at will is insufficient to support a claim of promissory estoppel where the defendant employer terminates the anticipated employment. See *Meerman v Murco, Inc*, 205 Mich App 610, 615-616; 517 NW2d 832 (1994). Furthermore, the mere fact that plaintiff planned to close her Midland practice does not establish detrimental reliance. Resignation of one's position and relocation are "customary and necessary incidents of changing jobs rather than consideration to support a claim of promissory estoppel." *Id.*, quoting *Marrero v McDonnell Douglas Capital Corp*, 200 Mich App 438, 443; 505 NW2d 275 (1993), mod on other grounds *Patterson v Kleiman*, 447 Mich 429, 433; 526 NW2d 879 (1994). In any event, plaintiff here only made preliminary steps toward closing her Midland practice. She made inquiries to recruit a buyer and cancelled patient appointments for two days, but took no action that prevented her from continuing with her practice. For these reasons, the trial court properly determined that there was no genuine issue of material fact with respect to plaintiff's promissory estoppel claim. Accordingly, that claim was properly dismissed.

Affirmed.

/s/ Karen Fort Hood
/s/ Christopher M. Murray
/s/ Deborah A. Servitto